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Order 2001-6-12



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 18th day of June, 2001

America West Airlines, Inc.

Served June 18, 2001-206

**Violations of 49 U.S.C. 41720 (formerly 41716)
and 49 U.S.C. 41712**

CONSENT ORDER

This order concerns violations by America West Airlines, Inc. (America West) of 49 U.S.C. 41720 (formerly 49 U.S.C. 41716). This consent order directs America West to cease and desist from further violations of that statute and to pay a compromise civil penalty.

Pursuant to 49 U.S.C. 41720, major carriers desiring to enter into certain types of joint venture agreements, including a frequent flyer program agreement, must submit such agreement to the Department for review at least 30 days before the agreement may take effect. The purpose of the required submission is to permit the Department an opportunity, prior to a joint venture agreement being implemented, to determine whether the agreement presents competitive issues or other issues requiring further investigation.

America West and Trans World Airlines, Inc., (Trans World) entered into an agreement permitting participation by each carrier's own frequent flyer program members in the other's frequent flyer program. The stated effective date of the agreement was March 15, 2000, at which time it was publicly announced and held out on each carrier's Internet site. However, the carriers did not submit the agreement to the Department until March 24, 2000.

By failing to submit the frequent flyer participation agreement to the Department for review at least 30 days prior to its becoming effective, America West violated 49 U.S.C. 41720. In addition, it is the position of the Enforcement Office that failure to comply with that section constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. 41712 because the airlines could not immediately provide the advertised benefits created by the agreement.

In mitigation, America West states that the late filing of the frequent flyer agreement was completely unintentional and no consumers were harmed. America West believed joining its frequent flyer program with the Trans World program represented a valuable benefit to its customers and frequent flyer program members

by substantially expanding available travel destinations for which they could earn frequent flyer miles. According to America West, the two airlines, which together accounted for approximately six percent of the domestic air service market, viewed the agreement as very pro-competitive, and enabling them to compete more effectively with the largest domestic airlines. America West states that in their desire to make these benefits available to the public, the two carriers inadvertently did not focus on the fact that the prior-submission requirements applied to joint frequent flyer programs. Finally, America West points out that as soon as it realized the agreement should have been submitted, it suspended implementation of the program until the Department's review process was completed.

We view seriously the failure by carriers to submit joint agreements to the Department for review pursuant to 49 U.S.C. 41720. After carefully considering all the facts in this case, including those set forth above by America West, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that enforcement action is warranted. In order to avoid litigation, America West has agreed to a settlement of this matter with the Enforcement Office.¹ America West consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. 41720 and 41712 and to the assessment of \$2,500 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. 46301. This order and the penalty it assesses serves the public interest and represents an incentive for all carriers to submit joint agreements to the Department in compliance with 49 U.S.C. 41720.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that America West Airlines, Inc., violated 49 U.S.C. 41720 by failing to submit to the Department for review a covered joint venture agreement prior to putting such agreement into effect;
3. We find that by engaging in the conduct and violation described in Paragraph 2 above, America West Airlines, Inc., engaged in an unfair and deceptive practice in violation of 49 U.S.C. 41712;
4. America West Airlines, Inc., and all other entities owned or controlled by America West Airlines, Inc. and their successors and assignees, are ordered to cease and desist from further violations of 49 U.S.C. 41720 and 49 U.S.C. 41712;
5. America West Airlines, Inc., is assessed a civil penalty of \$2,500 in compromise of the civil penalties that might otherwise be assessed for the violation found in Paragraphs 2 and 3 above;

¹ A separate settlement arising from this incident covering similar violations by Trans World has been reached with that carrier. See Order 2001-6-13.

6. Payment of the civil penalties described in Paragraph 5 of this order shall be made within 15 days of the date of issuance of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the attached instructions; and

7. Failure to pay the penalty as ordered will subject America West Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

Attachment

| | | | |
|--|--------------------|----------------------|--|
| (1) To 021030004 | (2) Type | | |
| (3) From | (4) Ref. | (5) Amount | |
| (6) Ordering Bank and Related Data | | | |
| (7/8) TREAS NYC/CTR/OST | | | |
| (9) BNF=/AC-69010005 OBI= | | | |
| (10) Payor | | | |
| (11) | | | |

1. **Treasury Department Code—Provided**
2. **Type Code—To be provided by sending bank.**
3. **Sending Bank's Code—(ABA#)**
4. **Reference No.—Optional number, entered if sending bank desires to number transaction.**
5. **Amount—Include dollar sign and punctuation including cents digits.**
6. **Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.**
- 7/8. **Entire line provided precisely as shown.**
9. **Entire line provided precisely as shown.**
10. **Enter name of air carrier or other payor (as shown on order).**
11. **Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."**

NOTE: Questions about these instructions should be directed to Mr. Yash Parekh, Office of Budget and Policy, Accounting Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Parekh when each payment is made.

(Revised May 2001)